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PRICE HENEVELD COOPER DEWITT & LITTON, LLP
695 KENMOOR, S.E.
P O BOX 2567
GRAND RAPIDS, MI 49501

EXAMINER

GREEN, BRIAN

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/805,313
Filing Date: March 13, 2001
Appellant(s): GORDON, GIGI C.

MAILED
SEP 08 2004
GROUP 3500

Steven L. Underwood
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 10, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

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(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-18 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,702,381	Carter et al.	10-1987
Design 390,403	Pirraglia et al.	2-1998
4,598,488	Inteso	7-1986
5,487,203	Brach, Jr. et al.	1-1996
3,496,589	Demner	2-1970
5,133,707	Rogers et al.	7-1992

Scotch-Brite Scour Pads, 3M, 1995.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,6-10,12, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter et al. (U.S. Patent No. 4,702,381).

Carter et al. shows in figures 1-3 the idea of labeling towels (T) with indicia (32) for indicating what the towel is to be used for, i.e. the towel with "HIS" is used for the man of the household and the towel with "HERS" is used for the lady of the house. Carter et al. does not specifically disclose the use of two or more towels. Carter et al. shows in figure 2 the idea of labeling a towel with HIS or HERS to indicate what surface (person) the towel is to be used on. It would have been obvious to one in the art to modify Carter et al. by using two or more towels in which one of the towels is labeled with HIS and another of the towels is labeled with HERS since this would allow a husband and wife to easily determine which towel is theirs. The towel with "HIS" is used for cleaning the man's hands, body,

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face, car, shoes, bathroom, etc. and the towel with "HERS" is used for cleaning the ladies' hands, body, face, car, shoes, bathroom, etc. It is considered within one skilled in the art to place any type of identification indicia (intended article to be cleaned with the towel) on each towel as desired. The towels (T) can be used for cleaning sinks, counters, walls, floors, etc. In regard to claim 3, each of the letters of "HIS" and "HERS" are considered to be symbols. In regard to claim 10, Carter et al. does not disclose whether the indicia has a color which is different from the color of the towel. It would have been obvious to one in the art to modify Carter et al. by making the indicia of the towel different from the color of the towel since this would allow the indicia on the towel to be seen in a better manner. In regard to claim 12, Carter et al. does not disclose how the indicia is applied to the towel. Lithographic, printing, and stenciling are all well known and conventional processes. It would have been obvious to one in the art to modify Carter et al. by using one of these techniques to attach the indicia to the towel since this would allow the indicia to be attached to the towel in an easier, faster, and less expensive manner.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carter et al. (U.S. Patent No. 4,702,381) in view of Pirraglia et al. (Des. 390,403).

Carter et al. discloses the applicant's basic inventive concept except for making the outline of the scrubber in the shape of the cleaning article. Pirraglia et al. shows in figure 1 the idea of making the outline of a towel in the shape of a person. In view of the teachings of Pirraglia et al. it would have been obvious to

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one in the art to modify Carter et al. by making the outline in the shape of a person or an object (in this case the cleaning article) since this would allow the desired towel to be identified in an easier manner.

Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter et al. (U.S. Patent No. 4,702,381) in view of Inteso (U.S. Patent No. 4,598,488).

Carter et al. does not disclose making the indicia raised relative to the surface of the towel. Inteso discloses in figure 1 and in column 1, lines 10-20 the idea of embroidering indicia on a towel. The embroidered indicia would create raised indicia. In view of the teachings of Inteso it would have been obvious to one in the art to modify Carter et al. by making the indicia raised since this would create a more aesthetically pleasing display.

Claims 5,11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter et al. (U. S. Patent No. 4,702,381) in view of Brach, Jr. et al. (U.S. Patent No. 5,487,203).

In regard to claims 5 and 13, Carter et al. does not disclose making the indicia raised relative to the surface of the towel. Brach, Jr. et al. discloses in figure 6 the idea of making the indicia (7) raised. In view of the teachings of Brach, Jr. et al. it would have been obvious to one in the art to modify Carter et al. by making the indicia raised since this would create a more aesthetically pleasing display. In regard to claim 11, Carter et al. does not disclose making the indicia recessed

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relative to the surface of the towel. Brach, Jr. et al. discloses in figure 5 the idea of making the indicia (7) recessed. In view of the teachings of Brach, Jr. et al. it would have been obvious to one in the art to modify Carter et al. by making the indicia recessed since this would create a more aesthetically pleasing display.

Claims 1-3,6-10,12, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Scotch-Brite scour pads with indicia" (listed on the form 1449).

"Scotch-Brite scour pads with indicia" shows a scouring pad including indicia thereon. The indicia is on a package that encloses and engages the pad. The indicia is printed on the package and includes words which indicate that the pad is to be used on cast iron pots and includes a symbol of a pot. "Scotch-Brite scour pads with indicia" also indicates that other Scotch-Brite products such as "Scotch-Brite Cookware sponge" and "Tub & Sink scrub sponge" can be used on other surfaces. "Scotch-Brite scour pads with indicia" does not specifically show a second cleaning article for cleaning a different article. It would have been obvious to one in the art to modify "Scotch-Brite scour pads with indicia" by adding a "Scotch-Brite Cookware sponge" or "Scotch-Brite Tub and Sink scrub sponge" since this would allow a wider range of articles to be properly cleaned within a household. The indicia on the "Scotch-Brite Cookware sponge" and "Scotch-Brite Tub & Sink sponge" would be similar to the indicia on the "Scotch-Brite scour pads with indicia" except it would be directed to the purposes of the "Scotch-Brite Cookware sponge" or "Scotch-Brite Tub & Sink Scrub sponge". In

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regard to claim 10, "Scotch Brite scour pads with indicia" does not disclose whether the indicia has a color which is different from the color of the pad. It would have been obvious to one in the art to modify "Scotch-Brite scour pads with indicia" by making the indicia different from the color of the pad since this would allow the indicia to be seen in a better manner.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Scotch-Brite scour pads with indicia" as applied to claim 1 above, and further in view of Demner (U. S. Patent No. 3,496,589).

"Scotch-Brite scour pads with indicia" discloses the applicant's basic inventive concept except for making the outline of the scrubber in the shape of the cleaning article. Demner shows in figure 1 the idea of making the cleaning article in the shape of the article to be cleaned. In view of the teachings of Demner it would have been obvious to one in the art to modify "Scotch-Brite scour pads with indicia" by making the outline in the shape of the article to be cleaned since this would allow the desired cleaning article to be identified in an easier manner.

Claims 5 and 13 are rejected under 35 U. S.C. 103(a) as being unpatentable over "Scotch Brite scour pads with indicia" as applied to claims 1 and 7 above, and further in view of Rogers et al. (U.S. Patent No. 5,133,707).

"Scotch-Brite scour pads with indicia" does not disclose making the indicia raised. Rogers discloses in figures 1 and 2 and in column 2, lines 10-20 the idea of embossing the indicia on a sheet. In view of the teachings of Rogers et al. it

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would have been obvious to one in the art to modify "Scotch-Brite scour pads with indicia" by making the indicia raised since this would create a more aesthetically pleasing display.

Claims 5, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Scotch-Brite scour pads with indicia" as applied to claims 1 and 7 above, and further in view of Brach, Jr. et al. (U.S. Patent No. 5,487,203).

In regard to claims 5 and 13, "Scotch-Brite scour pads with indicia" does not disclose making the indicia raised relative to the surface of the towel. Brach, Jr. et al. discloses in figure 6 the idea of making the indicia (7) raised. In view of the teachings of Brach, Jr. et al. it would have been obvious to one in the art to modify "Scotch-Brite scour pads with indicia" by making the indicia raised since this would create a more aesthetically pleasing display. In regard to claim 11, "Scotch-Brite scour pads with indicia" does not disclose making the indicia recessed relative to the surface of the towel. Brach, Jr. et al. discloses in figure 5 the idea of making the indicia (7) recessed. In view of the teachings of Brach, Jr. et al. it would have been obvious to one in the art to modify "Scotch-Brite scour pads with indicia" by making the indicia recessed since this would create a more aesthetically pleasing display.

(11) Response to Argument

The appellant argues that nowhere does Carter et al. indicate that the intended cleaning application for the article discloses therein would be even

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remotely associated with cleaning a surface selected from a group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen cabinets, kitchen sinks, dining tables, windows, and furniture, as presently claimed. The appellant defines in the claims that the system is for "cleaning" the above mentioned surfaces. As broadly defined, the towels of Carter et al. are capable of performing the function of being used to clean the surfaces mentioned above, i.e. the bathroom floor (when it gets wet), the kitchen counter (when it gets wet), etc.

The appellant argues that the towel of Carter et al. does not serve the same purpose as the present invention. The Carter et al. patent does not have to serve the same purpose as the applicant's invention in order to be used to reject the claims.

The appellant argues that Carter et al. does not disclose a system that addresses food borne cross-contamination issues in kitchen. The applicant fails to define this feature in the claims and each towel of Carter et al. is capable of performing this function.

The appellant argues that the towel disclosed by Carter et al. is not used to identify specific cleaning tasks for bathroom, kitchen, or other household fixtures or furniture. The towel taught by Carter et al. includes indicia (his/hers) to allow a towel to be identified from other towels. This indicia allows a person to quickly determine which towel to use for cleaning their body, hands, face, car, bathroom floor, etc.

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The appellant argues that the towel disclosed by Carter et al. does not have a specific purpose that includes cleaning areas in the home or business for specific purposes. The towel of Carter et al. is capable of performing all of the functions defined by the applicant in the claims.

The appellant argues that Carter et al. only discloses a single towel and does not disclose using the indicia (32) to distinguish one cleaning application from another. Carter et al. discloses the use of a towel that includes indicia (32) thereon. The indicia can include the word HIS or the word HERS. Clearly it is within one having ordinary skill in the art to provide two or more towels in which one of the towels includes the word HIS and another of the towels includes the word HERS in order to allow a husband and wife to distinguish between their respective towels. The indicia (32) on the towel would distinguish the cleaning applications from one another.

The appellant argues that Carter et al. does not distinguish between cleaning articles to clean different surfaces. The examiner disagrees since Carter et al. teaches the use of separately labeling towels with His or Hers indicia. The His indicia on the one towel makes it clear that the towel is to be used by the man and the towel marked by the Her indicia is to be used by the woman. Each towel is marked for a different cleaning surface, i.e. the man and the woman.

The appellant argues that there is absolutely no indicia indicating the particular application for which the cleaning purpose is intended, as claimed. The examiner disagrees since the towel of Carter et al. discloses the idea of

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placing indicia (His/Hers) onto a towel. This indicia allows a person to quickly determine which towel to use for cleaning their body, hands, face, car, bathroom floor, etc.

The appellant argues that the examiner has blatantly utilized hindsight reconstruction. The examiner disagrees since with regard to all of the independent claims, the examiner has merely added a second towel to the first towel taught by Carter et al. The use of multiple towels in a bathroom and is well known and conventional. The use of multiple towels allows each to be separately identified for a particular purpose by one or more people in a household.

The appellant argues that Pirraglia et al. cannot be viewed as disclosing a specific intended cleaning application having an indicia in the form thereof. Pirraglia et al. is merely being used to teach that it is known to make a towel into the specific shape of an object. The shape of the towel can be used to identify one towel from another towel. It is considered within one skilled in the art to vary the shape of the towel for any desired purpose.

The appellant argues that there is nothing in either of the references suggesting the combination of Carter et al. in view of Inteso. Inteso discloses the idea of embroidering indicia on a towel. The motivation to modify Carter et al. in view of Inteso is to create a more aesthetically pleasing towel, i.e. the embroidered indicia would be much more aesthetically appealing than silk screened indicia placed onto the towel.

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The appellant argues that there is nothing in either of the references suggesting the combination of Carter et al. in view of Brach Jr. et al. Brach, Jr. et al. discloses the idea of placing raised indicia as well as recessed indicia onto an article. The motivation to modify Carter et al. in view of Brach, Jr. et al. is to create a more aesthetically pleasing towel, i.e. the raised indicia or recessed indicia would be much more aesthetically appealing than silk screened indicia placed onto the towel.

The appellant argues that the Scotch-Brite cookware sponge in no way, shape or form bears indicia of an intended cleaning application and when the wrapper which contains the indicia is thrown away the sponge does not include any indicia thereon. The examiner disagrees since Scotch-Brite Scour Pads clearly includes indicia that specifically identifies the intended cleaning application, i.e. "cast iron pots, stove burners, broilers" and also shows pictures of the intended cleaning applications thereon. The appellant fails to claim that the indicia is located directly on the pads. Therefore the indicia on the package that is attached to the pad can be properly used with regard to the applicant's claims.

The appellant argues that the examiner provides no evidence that this other product (Scotch-Brite Cookware Sponge) bears any indicia whatsoever. Scotch-Brite Scour Pads discloses some of the other Scotch-Brite products (Cookware sponge, Tub & Sink sponge, etc.) that are available which can be used on other types of surfaces, i.e. kitchen, tub, and sink surfaces. The packaging on these other Scotch-Brite products would inherently be similar to the

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Scotch-Brite Scour Pads since the packaging would have to have indicia indicating the name of the product, the manufacturer of the product, the uses of the product, instructions on where and how to use the product, and a bar code for allowing the product to be scanned at a store for both inventory purposes and for sale purposes.

The appellant argues that the "Scotch-Brite" scour pads do not suggest or teach the desirability of providing a plurality of cleaning articles, each having a different cleaning application. The examiner disagrees since "Scotch-Brite scour pads with indicia" also indicates that other Scotch-Brite products "Scotch-Brite Cookware sponge", "Tub & Sink sponge", etc. can be used on other surfaces. This indicia on the "Scotch-Brite" scour pads clearly indicates that the scour pads can be used with other cleaning articles, each having a different cleaning application.

The appellant argues that Demner does not disclose a plurality of articles having a different intended cleaning application. Demner is merely being used to show that it is known to make a cleaning article in the shape of the intended cleaning application. "Scotch-Brite" already discloses the idea of using a plurality of cleaning articles for different cleaning applications.

The appellant argues that there is no motivation or suggestion to modify "Scotch-Brite" in view of Rogers et al. Rogers et al. is merely being used to show that it is known to emboss indicia onto a sheet. Rogers et al. provides the advantage (motivation) of creating a more aesthetically pleasing display, i.e. placing raised indicia on the package of "Scotch-Brite".

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The appellant argues that there is nothing in either of the references suggesting the combination of "Scotch-Brite" in view of Brach Jr. et al. Brach, Jr. et al. discloses the idea of placing raised indicia as well as recessed indicia onto an article. The motivation to modify "Scotch-Brite" in view of Brach, Jr. et al. is to create a more aesthetically pleasing display, i.e. the raised indicia or recessed indicia would be much more aesthetically appealing than silk screened indicia placed onto the package.

The appellant argues that the declaration filed on March 2, 2004 with regard to a competitor copying the applicant's invention shows non-obviousness. There is no indication in the declaration of when the 3M products were introduced to the market, or when 3M first developed such a product, or even that the 3M products came to market after that of the applicant. There is no evidence that the 3M products resulted from copying of the applicant's invention. Further, even if such copying were established, it should be noted that more than the mere act of copying by a competitor is needed to make the action significant to a determination of nonobviousness. In this regard, the appellant's attention is directed to the Court's comments in *Cable Electric Products, Inc. v. Genmark, Inc.*, supra, at 226 USPQ 889.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


BRIAN K. GREEN
PRIMARY EXAMINER

bkg
September 2, 2004

Conferees

LM 
JS 

PRICE HENEVELD COOPER DEWITT & LITTON
695 KENMOOR, S.E.
P O BOX 2567
GRAND RAPIDS, MI 49501